

Group I: Claims 1-29, drawn to an immunogenic composition and a method of enhancing an immune response wherein said method and composition comprise a chemokine; and

Group II. Claims 1-29, drawn to an immunogenic composition and a method of enhancing an immune response wherein said method and composition comprise a nucleic acid encoding a chemokine.

Applicants hereby elect to prosecute the claims of Group II, claims 1-29, **with traverse**. In support of the restriction requirement, the Examiner asserts that the claims of each group are patentably distinct. However, it is unclear to Applicants how claims 1-29 can be included in two allegedly separate Groups: Groups I and II. It is impossible for these claims to be "patentably distinct" from themselves.

Applicants submit that the outstanding Restriction Requirement confuses restriction and election practice. In the pending case, at best, an election (not restriction) as between the protein and nucleic acid may be appropriate. Certainly, Restriction as between chemokines and polynucleotide sequences encoding chemokines is entirely inappropriate. The MPEP clearly states that where the claims define the same essential characteristics of a single disclosed embodiment of an invention, varying in scope or breadth of definition of the same disclosed subject matter, a restriction requirement is improper. (see, MPEP 806.03) As discussed above, Groups I and II define essentially the same subject matter. Thus, applicants submit that the Restriction Requirement be redefined to combine Groups I to II.

Applicants also note that the Examiner has not provided the classifications and/or subclassifications for the allegedly distinct Groups. Applicants submit that the search required for both Groups is the same. Therefore, examination of these allegedly distinct inventions in one application would not only not place an undue burden on the Examiner, but would actually save the Examiner time.

Applicants expressly reserve their right under 35 USC §121 to file one or more divisional applications directed to the nonelected subject matter during the

pendency of this application. Further, should the Examiner make the requirement final, Applicants reserve the right to appeal.

In response to the various species election requirements, Applicants elect HCV immunogens; and MIP-1 α . It is to be understood that these election of species is for the purposes of preliminary search and examination only, and that upon allowance of a generic claim, applicants will be entitled to consideration of claims to the additional species.

The proposed groupings of the claims are confusing and any determination of distinctness of independence of the claimed invention(s) by the Examiner may have later ramifications during prosecution of this and related applications. For example, Applicants cannot understand what ramifications the proposed restriction requirement would have relative to double patenting issues during prosecution of the non-elected claims if they were filed and prosecuted in related applications (see, MPEP 806). **Further clarification is respectfully requested before the Examiner takes further action in this application. The Examiner is requested to review Applicants' traverse of the restriction requirement and to contact the Applicants.**

Respectfully submitted,

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